

IC STAFF
Routing Slip

TO:	ACTION	COORD	INFO
EO/ICS			24 Jun
D/ICS			
DD/ICS			
DD/RE			
EA-D/ICS			
SA-D/ICS			24
SA-D/ICS-EP			
REO			
COMIREX			
SIGINT			X
HUMINT			X
MASINT			
IPC			
PBO			
PPO			
CCISCMO			
IHC			
RDCO			
LL			
SECRETARIAT			
ADMIN			
REGISTRY		6-24-87	
SUSPENSE: _____			Date

STAT

STAT

REMARKS:

EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS		X		
5	DDI	X			
6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC		X		
10	GC				
11	IG				
12	Compt				
13	D/OCA				
14	D/PAO				
15	D/PERS				
16	D/Ex Staff		X		
17	C/TTAC		X		
18	NIO/S&T		X		
19	D/OSWR/DI		X		
20					
21					
22					
SUSPENSE		26 June 1987			
		Date			

Remarks

To #5: Please advise ES name of representative.

Executive Secretary

22 Jun '87

Date

STAT

3637 (10-81)



United States Department of State

Washington, D.C. 20520

Executive Registry

87-1619X/2

~~CONFIDENTIAL~~ (with ~~SECRET~~ Attachment) June 20, 1987

Senior Interagency Group No. 23

TO: OVP - Mr. Donald P. Gregg
NSC - Mr. Grant Green
ACDA - Mr. William Staples
25X1 CIA -
Commerce - Mrs. Helen Robbins
25X1 Customs - Ms. Lynn Gordon
Defense - COL William M. Matz, Jr.
Energy - Mr. William V. Vitale
FBI - Mr. James Geer
JCS - Mr. Larry Sizemore
25X1 Justice - Mr. John Richardson
NASA - Mr. Richard Barnes
NSA -
OMB - Mr. L. Wayne Arny
OSTP - Mr. Jonathan Thompson
Treasury - Mr. Robert Zoellick
USTR - Amb. Michael Smith



LEG 3-5R

SUBJECT: Draft NSDD on Improving the U.S. Export Control System

The SIG/TT will meet on Friday, June 26 at 3:00 p.m. in room 7516 (the Operations Center Conference Room) of the State Department. Attendance should be senior-level principals plus one.

The objective of the meeting will be the clearance of the attached draft NSDD on Improving the U.S. Export Control System (first seven pages) and the supporting follow-on statement (last four pages) on interagency dispute resolution procedures for dual-use export cases. An earlier draft was circulated in April. Comments submitted have been factored in as appropriate.

NSC staff has urged that this NSDD be submitted to the National Security Council immediately. Agencies are therefore asked to come prepared to clear the document or present options for consideration.

Attendees should be called in to Ted Papendorp (647-0094) or Steve Saboe (647-0095) by COB Thursday June 25.

Melvyn Levitsky
Melvyn Levitsky
Executive Secretary

Attachment:

Draft NSDD on Improving the U.S. Export Control System

~~CONFIDENTIAL~~ (with ~~SECRET~~ Attachment)

~~SECRET~~
The White House
Washington

National Security Decision
Directive no.

Date

IMPROVING THE U.S. EXPORT CONTROL SYSTEM

INTRODUCTION

The goal of our national security export controls is to restrict to our adversaries the export of goods and technologies which make a significant contribution to their military potential. We have pursued this goal vigorously and should continue to do so. Our efforts are beginning to have real impact.

We must be mindful, however, that East-West controls can have undesirable side-effects on West-West trade. High technology exports to Western countries are very much in our national interest. They increase the competitiveness of our firms, promote growth in our economy, maintain ties with our friends, and enhance the strength of our allies. We should not let East-West controls create delay, frustration, uncertainty, alternative sourcing, and loss of U.S. competitiveness in West-West trade.

We need, therefore, to find ways to facilitate legitimate West-West trade without sacrificing the national security benefits of preventing diversions or unacceptable transfers to our adversaries.

INTERAGENCY COOPERATION AND DISPUTE RESOLUTION

We must resolve interagency differences on export licensing cases expeditiously. Cases which drag on without resolution leave our companies in an untenable position with their customers and contribute to an erosion of political support for the government's role in export control. We must significantly improve our performance in this area.

I therefore ask the Secretary of Commerce henceforth to see that licensing decisions on U.S.-origin cases arising under the Export Administration Act be made within 90 days, unless the statute mandates shorter deadlines for particular types of cases. U.S. cases to be reviewed by COMCOM should be submitted to COMCOM within this 90-day limit, after which the relevant COMCOM time limits for cases apply. Extensions to this 90-day limit should be sought sparingly and may only be granted in writing by the Secretary or the Under Secretary of Commerce. Every extension must be reported in writing, with explanation, to the Assistant the President for National Security Affairs.

~~SECRET~~

SECRET

- 2 -

In order to meet this goal, cases must be resolved as quickly as possible and at the lowest possible level. When interagency differences persist, all agencies are to follow these principles and procedures:

- a) All US-origin cases arising under the Export Administration Act will be resolved in the Export Administration Review Board (EARB) structure of committees or will be forwarded to me for final resolution.
- b) The time available for case resolution and case escalation at each level of the EARB structure will be strictly limited and adhered to without exception.
- c) At each level of the escalation process, the chairman of the committee handling the case will make a vigorous effort to resolve interagency differences and will hold at least one meeting of his committee to that end.
- d) If interagency differences persist, the chairman will, at a set time, propose a licensing decision. That decision will be implemented, after an interval to allow for escalation, if no escalation occurs.
- e) The burden of escalation will rest upon the dissenting agency or agencies. Requests for escalation must be in writing and must present a full statement of the reasons for dissent.
- f) If any agencies fail to register their positions or to escalate cases in the time and manner prescribed, Commerce is authorized to implement the committee chairman's decision. There will be no appeal to the White House of Commerce licensing actions taken under these rules.
- g) All cases originating from other COM governments will be handled by the structure of committees including the Economic Defense Advisory Committee (EDAC), the Senior Interagency Group on Technology Transfer (SIG/TT), and, for final resolution, the National Security Council. The same principles and procedures (sections a-f above) will apply.

As a follow up to this directive, the Assistant to the President for National Security Affairs will issue a detailed statement specifying how these dispute resolution procedures are to work in practice.

I further request that all cases which are currently over the statutory deadlines be cleared up within 30 days of the issuance of this directive.

SECRET

SECRET

-3-

FULL AUTOMATION OF LICENSING PROCESSES

A major step we can take to facilitate West-West trade is to fully automate our licensing systems. Automation will increase the efficiency and speed of case processing in the area where the greatest volume of licenses occurs. It will also help diminish the burden that export controls place on companies engaged in legitimate West-West trade.

Our primary goals are as follows:

- a) licensing systems that are essentially based on the electronic transmission of information;
- b) electronic application for licenses by the exporter to the licensing office, at least for routine, non-sensitive goods or technology to allied and friendly countries;
- c) expeditious case decisions and replies to exporters within three working days for routine, non-sensitive cases to allied and friendly countries;
- d) full, secure, and compatible electronic communication of cases within and between case-handling agencies and the U.S. Delegation to COCOM;
- e) the consolidation of our records, within limits prescribed by law, on unacceptable and suspect consignees and intermediaries of our goods and technologies around the world into computerized, continuously-updated databases which will serve as our primary screening mechanism in dual-use and munitions licensing;
- f) automated printing of export licenses and automatic entry and storage of the full licensing record for each case;
- g) electronic transmission of approved licenses to exporters whenever possible.

As I wish to be able to announce these accomplishments before the close of my Administration, I request that the Secretaries of Commerce, State, Defense, Energy, and the Director of Central Intelligence achieve these improvements in our two export licensing systems by January 1, 1989. By that time, an exporter should, under normal circumstances, be able to get a license approved for a routine, non-sensitive export to an allied or friendly country within three working days. I further request that this system be phased in as soon as possible for exports to COCOM and NATO countries.

SECRET

SECRET

-4-

EXPORT CONTROL LISTSStreamlining

The work that we have done to bring the COCOM control lists up to date over recent years has been excellent. We have brought new militarily sensitive technologies under control for the first time, making up for work that should have taken place a decade earlier.

We must always be mindful, however, of the need for political support in this process. What we do must receive the general support of the Congress, the business community, our allies, and the American people in order to be ultimately effective. That support has begun to erode. We need to arrest that erosion without sacrificing controls that are essential to our national security. Our resources, too, are finite. We must therefore concentrate them on the protection of truly critical strategic technologies.

I therefore request the Secretary of State, supported by the Secretaries of Commerce, Defense and Energy, and the Director of Central Intelligence, to pursue with our COCOM partners the streamlining of the the COCOM International List. In particular, we should seek to eliminate from this list: a) all or most items on the lowest tier, i.e. the Administrative Exception Note level; b) items which can no longer be controlled because of widespread foreign availability from non-COCOM sources; and c) any other items which no longer meet the strict application of the COCOM strategic criteria.

Unilateral National Security Controls

We should also attempt to make our control system as fully multilateral as possible. Unilaterally controlled items, except in very rare circumstances where we are sole suppliers, do not achieve their purpose and simply reduce the ability of U.S. exporters to compete against foreign suppliers.

I therefore request that the Secretary of Commerce, in cooperation with the Secretaries of Defense, State, Energy, and the Director of Central Intelligence, review all unilaterally controlled national security items on the U.S. Commodity Control List. This review should, within three months, eliminate all unilateral national security-controlled items which no longer meet statutory requirements or are no longer critical for national security reasons or can no longer be applied effectively because of foreign availability.

SECRET

SECRET

-5-

I further request that the Secretary of State lead an interagency review of any unilateral aspects to the way the United States Government implements COCOM control policies and procedures. This review should, by the end of 1987, lead to the processing of export license cases in ways comparable to and compatible with those of our COCOM partners.

Understandable Control Lists

A further reason that support has eroded for the control lists is that they are almost impossible to read and understand. In a society such as ours, regulatory systems must make sense to those whose compliance is sought. We need control lists in simpler and clearer language, control lists which present the underlying rationale for controlling the technology and are understandable by those in our high technology community.

I therefore request that the Secretaries of Commerce and Defense rewrite the dual-use control lists in order to make them understandable. This effort should produce a new understandable Commodity Control List by October 1, 1987.

Improving the List Review Process

U.S. preparations for COCOM List Reviews must take advantage of all available U.S. Government expertise. To ensure that the List Review process receives objective and impartial assessments of Soviet Bloc targeting of Western technology and Soviet industrial capabilities, I request that the Director of Central Intelligence regularly prepare, in support of U.S. List Review proposals and positions, assessments of: a) the degree to which Western technologies are critical to the development and operation of current or planned Soviet military systems, and b) the ability of the Soviet Union and its allies to acquire these critical technologies from other countries and apply them in their defense programs.

I also request that the Secretary of State, after consultation with the Secretaries of Commerce and Defense, appoint members of the U.S. business community to serve in advisory capacities in support of List Review negotiations.

I further request that the Secretary of State ensure that we miss no COCOM-agreed deadlines for List Review negotiations and that we never enter List Review negotiations without an agreed U.S. Government position. To that end, interagency disputes arising in the formulation of U.S. negotiating positions should be expeditiously resolved through the EDAC-SIG/TT-NSC structure.

SECRET

SECRET-6-

Henceforth, at least ten calendar days before the beginning of any particular List Review negotiation, either a cable containing an interagency-agreed position should be cleared at the NSC, or a memorandum containing options for decision should be forwarded to the NSC for final resolution.

EXPORTS TO CHINA

Our policy toward China has worked well. We want to see China continue to modernize, to strengthen its ties with the West, and to go further along the path of internal development which it has chosen. A further substantial liberalization of export controls can contribute to these goals. Such a move would have significant advantages for the United States and the West. The time for our next major step in this process has come.

In 1983, I decided that U.S. export licensing practice should limit those exports to China that would make a key contribution to identifiable Chinese military programs in the six critical mission areas in such a manner as to threaten U.S. national security interests. Implementation of that language by the agencies concerned has led to some liberalization.

To make further progress, we must now define more precisely the national security threat posed by exports of dual-use items to civil endusers in China, as related to the mission areas. Therefore, an interagency group, chaired by the Assistant to the President for National Security affairs will review USG dual-use export control policy for China.

The group will identify those items which, if exported to civil endusers in China would clearly lead, within the next 5 years, to the deployment of Chinese military systems which would enhance Chinese military capabilities to a degree that would degrade the technological advantages U.S. and allied forces require to maintain a significant margin of military superiority. The group shall take into account the impact that the export of a given item to China will have on U.S. intelligence gathering capabilities, foreign availability, and precedents set by previously approved cases. This review will be completed by July 15, 1987.

SECRET

SECRET**-7-**

Based on this review, the Secretary of State will submit proposals to COCOM to allow all dual-use items, except those identified by the interagency review, to be exported to China at national discretion. In addition, exports to China of any items made subject to national discretion treatment in COCOM will be reviewed by Commerce only, except where interagency review is required by non-COCOM controls.

Such a further liberalization of controls on exports to China should be conditioned on: (1) an understanding that certain sensitive exports will continue to be controlled under the supercomputer, nuclear non-proliferation, and missile technology controls, and (2) that measures are implemented to permit officials from COCOM members governments to make post-shipment checks in China, when required, to deter diversion of sensitive technology.

In addition, as part of this liberalization process, we must be assured that US interests will be protected in the event China should undertake actions threatening our national security. Therefore, a safeguard clause which permits the reversal of all COCOM liberalization measures for China in the event of threatening actions by China, must be agreed in COCOM before further significant liberalization is implemented.

IMPLEMENTATION

Finally, I request that the Secretaries of Commerce and State report to me in writing on the tenth day of every quarter starting on July 10, 1987, giving a detailed statement of progress in the implementation of this directive, alerting me as necessary to any problems which develop that may need my attention.

An unclassified version of the sections of this directive on the automation of licensing, dispute resolution, and the export control lists will be issued immediately after this directive is signed.

Ronald Reagan

WANG 1669L

SECRET

SECRET

PROCEDURES FOR INTERAGENCY CASE DISPUTE RESOLUTION

Pursuant to the National Security Decision Directive no. XXX, the following procedures will be used to resolve interagency disagreements in export cases arising under the Export Administration Act or in COCOM.

US-ORIGIN CASES UNDER THE EAA

1. All cases are to be resolved as quickly as possible and at the lowest level possible.
2. All cases are to be resolved within 90 days, or less if the EAA mandates a shorter time limit. Extensions to this 90-day time limit should be granted sparingly. They may only be granted by the Secretary or Under Secretary of Commerce. All extensions should be reported in writing, with explanation, to the Assistant to the President for National Security Affairs.
3. When cases must be escalated, the following procedures will, without exception, be followed:

Operating Committee

- a) Cases will go to the Operating Committee as soon as interagency differences are clear but never later than the 40th calendar day after they are first registered in Commerce. Cases will be marked indicating the date of registration in Commerce, the 40th calendar day after that, and the date when escalation procedures begin.
- b) The Operating Committee will have six calendar days in which to resolve interagency differences on them and will meet at least once in full session in an effort to achieve that goal.
- c) For cases unresolved by the 6th day after entry on the Operating Committee's agenda, i.e. the 46th day if the full interagency review 40-day period was used, the Chairman of the Operating Committee will, in writing, propose a licensing decision, drawing upon the advice of the participating agencies.
- d) Any agency not reporting its views to the Operating Committee will be considered as supporting the decision of the Chairman.
- e) Any agency or agencies dissenting from the Chairman's decision will then have four days in which to escalate the case, in writing, with a full statement of its arguments.

SECRET

SECRET

-2-

f) If no written statement requesting escalation is received by the Chairman of the Subcommittee of the Advisory Committee on Export Policy (Sub-ACEP) by COB on the 10th day after the case was entered on the Operating Committee's agenda, i.e. the 50th day if the full 40-day interagency review period was used, the Chairman's decision stands and the Commerce Department is authorized to implement the decision.

g) No protests against licensing actions taken under these procedures will be entertained at the White House.

Subcommittee of the Advisory Committee on Export Policy (Sub-ACEP)

h) Cases which have been escalated in accordance with these procedures go to the Sub-ACEP on the 11th day (full review - 51st day) after entry into the escalation process.

i) The Sub-ACEP will use exactly the same procedures for case resolution as the Operating Committee. If efforts to resolve the case fail, the Sub-ACEP Chairman will propose a licensing decision in writing for any unresolved case on the 16th day (full review - the 56th day) after entry into the escalation process. Dissenting agencies will have four days, i.e. until COB of the 20th day (full review - the 60th day) to escalate in writing. If no written escalation occurs, the Sub-ACEP Chairman's decision stands and the Commerce Department is authorized to proceed with implementation of the decision. Again no protests will be entertained at the White House.

Advisory Committee on Export Policy (ACEP)

j) Cases which have been properly escalated go to ACEP on the 21st day (full review - 61st day) after entry into the escalation process.

k) The ACEP will use exactly the same procedures as the committees below it. For unresolved cases, the Chairman will propose a licensing decision in writing by the 26th day (full review - the 66th day). Escalation by dissenting agencies must occur by COB of the 30th day (full review - the 70th day). When agencies do not escalate in accordance with these procedures, Commerce is authorized to implement the Chairman's decision, no protests being entertained at the White House.

Export Administration Review Board (EARB)

l) Cases which have been properly escalated go to the EARB on the 31st day (full review - the 71st day).

SECRET

SECRET

-3-

m) The EARB will use exactly the same procedures as the committees below it. In unresolved cases, the Chairman will propose a licensing decision in writing by the 36th day (full review - the 76th day). Escalation by dissenting agencies must occur by COB of the 40th day (full review - the 80th day). If proper escalation does not occur, Commerce is authorized to implement the Chairman's decision, no protests being entertained at the White House.

The President

n) cases which have been properly escalated will be referred to the President on the 81st day so that they can be decided within the 90-day time limit.

FOREIGN-ORIGIN COCOM CASES

1. All cases are to resolved as quickly as possible and at the lowest level possible.

2. All cases are to be resolved within 90 days, which is our principal obligation under COCOM rules, unless COCOM has decided shorter time periods for particular types of exports.

3. The case escalation process will use the same principles and procedures as those used in the resolution of US-origin cases under the EAA except that they will proceed through a different structure of interagency committees.

a) All foreign-origin COCOM cases will be entered on the agenda of the Economic Defense Advisory Committee Working Group III as soon as they are received in Washington. The starting date for the 90-day time limit will be the COCOM registration date of the case. Cases will be marked indicating the COCOM date of registration, the 40th calendar day after that, and the date when escalation procedures begin.

b) Escalation procedures will begin in EDAC III when it is clear that interagency disagreements exist, but never later than the 40th calendar day after the COCOM registration date of the case. EDAC III will meet at least once in full session in order to resolve the case. For any case unresolved by the 6th day (full review - 46th day), the Chairman of EDAC III will propose a decision in writing. Dissenting agencies will have until COB of the 10th day (full review - 50th day) to escalate the case in writing stating the reasons for their dissent. If agencies fail to escalate cases in accordance with these procedures, State is

SECRET

SECRET

-4-

authorized to notify COCOM of the U.S. position in accordance with the Chairman's decision, no protests being entertained at the White House.

c) On the 11th day (full review 51st day), properly escalated cases go to the Subcommittee of the Economic Defense Advisory Committee (Sub-EDAC). On the 16th day (full review - 56th day), the Sub-EDAC Chairman will propose make a decision followed by four days for formal escalation. State is authorized to notify COCOM of the U.S. position in accordance with the Chairman's decision if escalation in writing by a dissenting agency has not occurred by COB of the 20th day (full review - 60th day), no protests being entertained.

d) On the 21st day (full review-61st day), properly escalated cases go to the Economic Defense Advisory Committee. On the 26th day (full review-66th day), the EDAC Chairman will make a decision, followed by four days for formal escalation. State is authorized to notify COCOM of the U.S. position in accordance with the Chairman's decision if escalation in writing by a dissenting agency has not occurred by COB of the 30th day (full review - 70th day), no protests being entertained.

e) On the 31st day (full review - 71st day), properly escalated cases go to the Senior Interagency Group on Technology Transfer. On the 36th day, the Chairman will propose a decision in unresolved cases, followed by four days for formal escalation. State is authorized to notify COCOM of the U.S. position in accordance with the Chairman's decision if escalation in writing by a dissenting agency has not occurred by COB of the 40th day (full review - 80th day), no protests being entertained.

f) On the 80th day, properly escalated cases should be sent to the National Security Council where they will be resolved within the 90-day time limit set by COCOM.

g) All these time limits will be temporarily suspended, as they are now under standard COCOM procedures, when a country stops the case clock in order to ask questions or seek pertinent information.

In order to ensure personal accountability for the proper handling of each case and the efficient implementation of the President's directive, the Secretaries of Commerce, State, Defense, and Energy should assign officers to be personally responsible for the tracking, handling, and follow-up on each case from its receipt to its final disposition.

WANG 0078A

(Signed - National Security Adviser)

SECRET